Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01197/2012

THE IMMIGRATION ACTS

Heard at : Victoria Law Courts	**Determination Promulgated**
On : 6th June 2013	**On : 12th June 2013**

Before

Upper Tribunal Judge McKee

Between

JHANGIR BARJANI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Shahnaz Nowaparast of Duncan Moghal Solicitors
For the Respondent: Mr Neville Smart, Senior Presenting Officer

DETERMINATION AND REASONS

1. Jhangir Barjani was 22 years old when he arrived here from Iran in September 2006. He claimed asylum on the basis of involvement with the banned Komala Party, but the claim was rejected and the subsequent appeal was dismissed by the AIT, neither the Secretary of State nor the immigration judge having found the claim to be

credible. This all took place within the space of a few months, but Mr Barjani did not leave the United Kingdom, and in January 2010 his solicitors submitted further representations based upon what purported to be an arrest warrant, issued in Iran on 20th June 2009. The Border Agency did not decide whether to treat these representations as a fresh claim. Instead, in August 2010 Mr Barjani was granted indefinite leave to remain, based – according to the Notice of Decision issued in November 2012 – on "*4 years residency in the United Kingdom*." I am unaware of any policy to grant indefinite leave after four years' residence, most of it unlawful. It may be that indefinite leave was granted by the Case Resolution Directorate under the 'legacy' programme, although this was intended for asylum seekers with 'unresolved' claims. One might have thought that Mr Barjani's claim, once he had become 'appeal rights exhausted', would have been regarded as 'resolved'. It might strike some as odd that an asylum seeker who is found to have fabricated his claim but who is unwilling to leave the United Kingdom should be rewarded with indefinite leave if he stays here long enough. Mr Barjani was fortunate indeed.

2. This good fortune did not last. In June 2011 Mr Barjani was convicted of possessing a Class A drug with intent to supply, and was sentenced to four years in prison. This triggered automatic deportation under section 32(5) of the UK Borders Act 2007, and at this point the Home Office rejected the further representations made in January 2010, finding that Mr Barjani was not at risk, such as to bring him within Exception 1 of section 33. On the *Tanveer Ahmed* principle, no reliance was placed on the purported arrest warrant. The asylum claim was also certified under section 72 of the 2002 Act. A deportation order was duly signed on 6th November 2012.

3. An appeal came before the First-tier Tribunal on 7th February, and was dismissed by a panel comprising Judge William Khan and Mr Martyn Griffiths, JP. They too placed no reliance on the arrest warrant, finding that the only issue which might get the appellant into any trouble with the authorities was his illegal exit from Iran. But following the 'country guidance' in *SB (risk on return – illegal exit)* [2009] UKIAT 53, the panel did not think that this would result in persecutory ill-treatment. They rejected the argument that the Iranian authorities would have learnt about the appellant's conviction for a drugs offence because of publicity about it on the Internet, and that this publicity would cause the appellant to incur 'double jeopardy', leading to further punishment, and even execution, in Iran. People convicted of drugs offences committed in Iran itself were certainly liable to be executed, but there was no credible evidence that this happened to Iranians who had been convicted of drugs offences committed abroad.

4. Permission to appeal to the Upper Tribunal was granted by Designated Judge Lewis, who was concerned that the First-tier Tribunal might not have dealt adequately with the background evidence of double jeopardy, particularly in light of the publicity generated in the United Kingdom by the appellant's offences. Judge Lewis said nothing about another ground of appeal, namely that the appellant would be at risk on return for having "presented/ used/ created" a forged document purporting to come from the Iranian judiciary, i.e. the arrest warrant.

5. When the matter came before me today, both issues were canvassed by Miss Nowaparast and resisted by Mr Smart. I shall deal first with the issue of the forged arrest warrant. It seemed to me at first that Miss Nowaparast was trying to have her

cake and eat it, because before the First-tier Tribunal she was arguing that the arrest warrant was genuine. It was the proof that her client's claim to have belonged to the Komala party was true, and that he would be at risk for that reason on return. But now she was saying that, as it was false, her client would be at risk on return for using a false document.

6. Nevertheless, once I had looked at Judge Khan's handwritten record of proceedings it became clear that Miss Nowaparast did in her closing submissions assert that the Iranian authorities would discover, from what Iranians living in South Wales had posted on the Internet, both that the appellant had been convicted of a drugs offence and that he had produced a forged arrest warrant in support of his asylum claim. The latter submission did not appear in the determination, and no finding was made on whether use of the arrest warrant would create a separate risk for the appellant. This omission seemed to me an error of law, and Mr Sharp did not demur. But I may have gone too far in supposing this to be a material error of law.

7. Nearly all of what Miss Nowaparast said in her submissions has been faithfully transcribed from the handwritten Record of Proceedings to paragraph 15 of the First-tier determination. Thus, we read at paragraph 15 that the authorities in Iran monitor Internet operations, and are likely thereby to have learnt about the appellant's conviction for drug-dealing. Drug-dealers are hanged in Iran by the hundred every year, a fate which the appellant too was likely to suffer on return. The hand-written note is somewhat longer : "Likely authorities will find out about his conviction + his claim about presenting a forged doc – i.e. the arrest warrant which the Iranian community in Sth Wales say is not genuine." No submission was made, it would seem, that presenting a forged document would give the Iranian authorities a separate and free-standing reason for persecuting the appellant. The whole thrust of the submissions was that what had been posted on the Internet would be read by the authorities, who would hang the appellant for committing a drug offence, regardless of where the offence was committed. Unsurprisingly, the tribunal went on to deal with the submission that the appellant was at real risk of suffering the death penalty as a drugs offender. They also dealt with Miss Nowaparast's submission that the arrest warrant was genuine, having been authenticated by an expert. They can hardly be blamed for not realising that there was an alternative submission, *viz* that the warrant was not genuine and that the appellant would be punished for uttering a false instrument.

8. However, having indicated at the hearing that there had been a material error, I then had to re-make the decision on the appeal. It was agreed on all hands that this would be by way of submissions only. Miss Nowaparast was able to adduce a document which had not been before the First-tier Tribunal, namely the Country of Origin Information Report on Iran, issued on 16th January 2013. At 11.48 there is a section on crimes committed outside Iran, which mentions Article 5 of the Penal Code. This article is the evidence relied on to establish that Mr Barjani risks punishment for proffering a false arrest warrant. But what Article 5 actually penalizes is forgery of documents emanating from the Supreme Leader of the Islamic Republic or from the President and from a small number of other very high-ranking officials, such as the head of the judicial branch and the head of the Supreme Court. A forged arrest warrant purporting to have been issued by the Deputy Enforcement Officer at the Babol Court would simply not be covered by this, as Mr Sharp pointed out.

9. That puts paid to the arrest warrant as a separate head of risk on return. It features among a small number of Internet postings set out in the main Appellant's Bundle, consisting of two articles about Mr Barjani in the South Wales Evening Post, quoting comments from members of the Iranian community in Swansea, who express the hope that Mr Barjani will be deported for drug-dealing, and allege that he bought an arrest warrant in Iran "*in a bid to persuade the authorities that he would be in danger should he return to Iran*." One of the articles quotes a response from the UK Border Agency that "*there was no evidence that Barjani had produced a forged document*", but that issue need trouble us no longer.

10. What needs to be assessed is whether the posting of these two articles from the South Wales Evening Post in July 2011 is reasonably likely to have brought Mr Barjani's conviction of a drug offence to the attention of the Iranian authorities. Miss Nowaparast relies on 5.3 of the Operational Guidance Note on Iran for October 2012, which says that the Iranian government monitors Internet communications, especially social networking websites such as Facebook, Twitter and YouTube, and that returning Iranian citizens are sometimes stopped at Teheran International Airport and asked to log into their YouTube and Facebook accounts. But the two articles about Mr Barjani in the South Wales Evening Post do not appear on social networking websites. True it is that if one Googles 'Jahangir Barjani', those articles about him will appear. But the background evidence does not say that passengers returning to Iran are routinely looked up on Google to check whether they have been indulging in nefarious activities abroad.

11. Miss Nowaparast also relies on *BA (Demonstrators in Britain – risk on return) Iran* CG [2011] UKUT 36 (IAC) for the contention that Iranians returning from Britain are screened at Teheran International Airport, but this is to check whether they match photographs of Iranians protesting outside the Embassy in London. Mr Barjani has not participated in any political activities while in the United Kingdom, so – as the First-tier Tribunal also found – there is no serious possibility that such screening will cause him to suffer harm on return.

12. But even if I am wrong about that, and the Iranian authorities find out that Mr Barjani has served a sentence for drug-dealing in the United Kingdom, the evidence of 'double jeopardy' is very flimsy. It consists of an academic paper by an attorney in Teheran, quoted at 11.24 of the COIS Report and focusing on Article 7 of the Penal Code. This article says that "*any Iranian who has committed a crime outside the territory of Iran and is found in Iran will be punished in accordance with the Penal Laws of the Islamic Republic of Iran*." As the Teheran attorney himself admits, "*The ambiguity of Art. 7 of the Iranian penal code has led judges to make differing interpretations. Some judges believe that whether the accused has been convicted abroad or not, he could still be prosecuted and punished in Iran*." That sounds like the stuff of academic debate. It is far from saying that Iranians who have served prison sentences abroad are subjected to double punishment on their return.

13. Although both the Appellant's Bundle and 8.01-8.12 of the COIS Report, handed up by Mr Smart, contain reports about hundreds of people caught smuggling drugs through Iran being executed, there is not a single report about anyone being punished, far less executed, for having committed a drugs offence in another country

and having served a prison sentence there. Double jeopardy has never featured in a 'country guidance' case on Iran, but Mr Smart suggests that some assistance may be derived from *JC (double jeopardy : Art 10 CL) China* CG [2008] AIT 36. Apparently there is in China something in the Criminal Code which allows for re-prosecution of overseas offenders. But this is discretionary and extremely rare. The analogy suggested by Mr Sharp is that the presence of something on the statute book does not mean that it is ever resorted to in practice. Certainly in the case of Iran, if expatriate Iranians were being subjected to double punishment on return, there would have been reports of it by now.

14. The upshot is that I have reached the same conclusion as the First-tier Tribunal, that there is no real risk that the claimant will be subjected on return to Iran to ill-treatment breaching the European Convention on Human Rights (he is no longer relying on his asylum claim).

DECISION

The appeal is dismissed.

Richard McKee
Judge of the Upper Tribunal

11th June 2013